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APPLICATION OF

HENRY COUNTY POWER, LLC

CASE NO. PUE010300

**For a certificate of public convenience and
necessity for electric generation facilities
in Henry County, Virginia**

HEARING EXAMINER'S RULING

August 30, 2001

The Commission issued its Order for Notice and Hearing on July 12, 2001, in which, among other things, the Commission stated it would consider whether a waiver, pursuant to § 56-234.3 of the Code of Virginia, should be granted to Henry County Power, LLC ("Henry County Power") to commence, at its own financial risk, initial site work and permitting at the proposed generation facilities. Any waiver granted would be interim pending entry of a final order in which the Commission determines whether the facilities should be authorized and exempted from the requirements of Chapter 10 (§ 56-232 *et seq.*) of Title 56 of the Code of Virginia. The grant of an interim waiver is not determinative of whether the Commission will or will not authorize the proposed facilities. The Commission's order permitted interested parties to file comments to Henry County Power's request for a waiver. Henry County Power was further permitted an opportunity to file a response to any comments filed with the Commission.

The Commission's Staff filed its comments on August 10, 2001; no other comments were filed. Noting that the proposed facility will not be included in the rate base of any regulated utility whose rates are regulated by the Commission, the Staff stated it does not oppose Henry County Power's request for an interim waiver to the extent such preliminary activities are limited to financial expenditures and non-intrusive site preparation, such as surveying, sampling soil and water, and collecting data required for environmental permits. The Staff opposes any construction activity that physically impacts the site until the Staff has had the opportunity to consider the environmental review to be conducted by the Department of Environmental Quality.

On August 15, 2001, Henry County Power filed its Response to Comments on Request for Interim Waiver. In its Response, Henry County Power states that it will be a merchant power generation facility, selling its output exclusively at wholesale on the open market. Henry County Power further states that the cost of the proposed facility will not be included in the rate base of any electric utility serving retail customers in Virginia, and that the success or failure of the facility will be borne by Henry County Power's investors and not by any captive retail electric customers. Finally, Henry County Power states that the limitations on activities at the site proposed by the Staff are consistent with Henry County Power's plans, and Henry County Power does not object to them.

Good cause having been shown, I find Henry County Power's request for a waiver should be granted. Accordingly,

IT IS DIRECTED that Henry County Power's request for a waiver pursuant to § 56-234.3 of the Code of Virginia, as limited herein, is hereby GRANTED.

Howard P. Anderson, Jr.
Hearing Examiner